

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MICHAEL C. BROWN,)	NO. ED CV 15-743-PA(E)
)	
Petitioner,)	
)	
v.)	ORDER OF DISMISSAL
)	
M.D. BITER (Warden Kern)	
Valley St. Prison),)	
)	
Respondent.)	
)	

On April 15, 2015, Petitioner filed a "Petition for Writ of Habeas Corpus by a Person in State Custody" ("the Petition"). The Petition challenges Petitioner's 1997 Riverside Superior Court criminal judgment. Petitioner previously challenged this same criminal judgment in a prior habeas corpus petition filed in this Court. See Brown v. Terhune, CV 02-61-PA(E). On February 4, 2003, this Court entered Judgment in Brown v. Terhune, CV 02-61-PA(E), denying and dismissing the prior petition on the merits with prejudice.

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1 The Court must dismiss the present Petition in accordance with
 2 28 U.S.C. section 2244(b) (as amended by the "Antiterrorism and
 3 Effective Death Penalty Act of 1996"). Section 2244(b) requires that
 4 a petitioner seeking to file a "second or successive" habeas petition
 5 first obtain authorization from the Court of Appeals. See Burton v.
 6 Stewart, 549 U.S. 147, 157 (2007) (where petitioner did not receive
 7 authorization from Court of Appeals before filing second or successive
 8 petition, "the District Court was without jurisdiction to entertain
 9 [the petition]"); Barapind v. Reno, 225 F.3d 1100, 1111 (9th Cir.
 10 2000) ("the prior-appellate-review mechanism set forth in § 2244(b)
 11 requires the permission of the court of appeals before 'a second or
 12 successive habeas application under § 2254' may be commenced"). A
 13 petition need not be repetitive to be "second or successive," within
 14 the meaning of 28 U.S.C. section 2244(b). See, e.g., Thompson v.
 15 Calderon, 151 F.3d 918, 920-21 (9th Cir.), cert. denied, 524 U.S. 965
 16 (1998); Calbert v. Marshall, 2008 WL 649798, at *2-4 (C.D. Cal.
 17 Mar. 6, 2008). Petitioner evidently has not yet obtained
 18 authorization from the Ninth Circuit Court of Appeals (see Petition,
 19 p. 7).¹ Consequently, this Court cannot entertain the present
 20 Petition. See Burton v. Stewart, 549 U.S. at 157; Remsen v. Att'y
 21 Gen. of Calif., 471 Fed. App'x 571, 571 (9th Cir. 2012) (if a
 22 petitioner fails to obtain authorization from the Court of Appeals to
 23 file a second or successive petition, "the district court lacks

24
 25 ¹ The Court takes judicial notice of the docket of the
 26 United States Court of Appeals for the Ninth Circuit, available
 27 on the PACER database. See Mir v. Little Company of Mary Hosp.,
 28 844 F.2d 646, 649 (9th Cir. 1988) (court may take judicial notice
 of court records). The Ninth Circuit's docket does not show that
 any individual named Michael C. Brown has obtained any order from
 the Ninth Circuit permitting the filing of a second or successive
 habeas petition in this Court.

jurisdiction to consider the petition and should dismiss it.")
(citation omitted).

For all of the foregoing reasons, the Petition is denied and
dismissed without prejudice.²

LET JUDGMENT BE ENTERED ACCORDINGLY.

DATED: May 12, 2015.



PERCY ANDERSON
UNITED STATES DISTRICT JUDGE

PRESENTED this 11th day of
May, 2015, by:

_____/s/_____
CHARLES F. EICK
UNITED STATES MAGISTRATE JUDGE

² In light of this disposition, Petitioner's "Motion and
Declaration for Appointment of Counsel," filed April 15, 2015, is
denied.